At common law the primary test of removal of fixtures by a tenant is whether the tenant's intention in installing them is that they are to be permanent or merely for his use while in possession. *Thompson Scenic Ry. Co.* v. *Young*, 90 Md. 278, 44 Atl. 1024; *Menger* v. *Ward*, 28 S. W. 821 (Tex.). But the law, wishing to protect the value of property, will not allow removal where it will injure the realty. *Friedlander* v. *Ryder*, 30 Neb. 783, 47 N. W. 83; *Pond & Hasey Co.* v. *O'Connor*, 70 Mich. 266, 73 N. W. 159. The California code is in effect declaratory of this view of the common law. How the change will affect the fixture is not generally considered in this country if it does not entirely destroy it. *Van Ness* v. *Pacard*, 2 Pet. (U. S.) 137; *Baker* v. *McClurg*, 198 Ill. 28, 64 N. E. 701. Insomuch as the intention of the tenant in every case would seem to be to remove whatever is of any value to him, it seems that the first requirement for removability should be only his intention that the property be used for trade purposes. Just as the law requires that the realty be not injured, so it seems that a further requirement of severability should be that the fixture retain a removable identity. *Whitehead* v. *Bennett*, 27 L. J. Ch. 474; *Collamore* v. *Gillis*, 149 Mass. 578, 22 N. E. 46. This rule more often than any other would preserve property for the benefit of society consistently with justice to the parties. An attempt to determine the value to society in each case would be obviously impracticable. Ornamental fixtures are governed by similar rules. See *Hayford* v. *Wentworth*, 97 Me. 347, 353, 54 Atl. 940, 942.

GARNISHMENT — PERSONS SUBJECT TO GARNISHMENT — INSURANCE COMPANIES: DISTINCTION BETWEEN INDEMNITY INSURANCE AND INSURANCE AGAINST LIABILITY. — A policy insuring the defendant against loss from the operation of his automobile provided that no action should lie against the company to recover for any loss unless brought by the assured for loss actually paid in money by him after trial of the issue. The plaintiff obtained a verdict against the assured in a suit defended by the insurance company for damages for injuries caused by the defendant's automobile. The plaintiff then sought to garnish the proceeds of the policy in the company's hands. *Held*, that he can do so. *Patterson* v. *Adan*, 138 N. W. 281 (Minn.).

Cases on garnishment make a decisive distinction between contracts of indemnity against loss and contracts insuring against liability. *Finley* v. *United States Casualty Co.*, 113 Tenn. 592, 598, 83 S. W. 2, 3; *Stephens* v. *Pennsylvania Casualty Co.*, 135 Mich. 189, 193, 97 N. W. 686, 688. In the former, garnishment is impossible, because of the general statutory rule that contingent liabilities are not subject to garnishment. *Grimsrud* v. *Linley*, 109 Wis. 632, 634, 85 N. W. 410, 411. In the latter, garnishment is allowed, as the indebtedness is absolute. *Hoven* v. *Employers' Liability Assurance Corporation*, 93 Wis. 201, 67 N. W. 46. The question, then, is purely one of classification, and in many cases is not difficult. *Anoka Lumber Co.* v. *Fidelity & Casualty Co.*, 63 Minn. 286, 65 N. W. 353; *Fenton* v. *Fidelity & Casualty Co.*, 36 Or. 283, 56 Pac. 1096. The majority of the cases have held policies like that in the principal case to be contracts of indemnity. *Allen* v. *Ætna Life Ins. Co.*, 145 Fed. 881; *Frye* v. *Bath Gas & Electric Co.*, 97 Me. 241, 54 Atl. 395. *Contra*, *Sanders* v. *Frankfort Marine, etc. Ins. Co.*, 72 N. H. 485, 57 Atl. 655. *Cf.* *Blackstone* v. *Alemannia Fire Ins. Co.*, 56 N. Y. 104; *In re Eddystone Marine Ins. Co.*, [1892] 2 Ch. 423. In the principal case there are many provisions which already insure against liability, and the proviso in terms applies to some of these. In such a case of ambiguity it would seem that the intention of the parties would be best carried out by construing the policy against the insurer. See *Kratzenstein* v. *Western Assurance Co.*, 116 N. Y. 54, 59, 22 N. E. 221, 223. This is the more reasonable since the proviso seems to be directed at the fraudulent payment by the insured of pretended claims, and can be made effective by confining it to cases where the company has not conducted the

defense. *Contra, Connolly* v. *Bolster*, 187 Mass. 266, 72 N. E. 981; *Cushman* v. *Carbondale Fuel Co.*, 122 Ia. 656, 98 N. W. 509.

ILLEGAL CONTRACTS — CONTRACTS COLLATERALLY RELATED TO SOMETHING ILLEGAL OR IMMORAL — RECOVERY OF PROCEEDS OF ILLEGAL TRANSACTION IN HANDS OF AGENT. — The plaintiff sent goods to the defendant, his agent, with an illegal gambling device by which the goods were to be sold. It was agreed that the proceeds should be kept separate and remitted to the plaintiff, and that title in all the property should remain in the plaintiff. *Held*, that the plaintiff can recover the proceeds of the illegal sales. *Yale Jewelry Co.* v. *Joyner*, 75 S. E. 993 (N. C.).

The law will not aid in enforcing an illegal contract. Therefore the defendant in the principal case cannot be forced to perform his contractual obligation to remit the proceeds. *Snell* v. *Dwight*, 120 Mass. 9. If the illegal transaction were completed and the proceeds handed to an agent who did not participate in the transaction, the agent could not set up the illegality of the former transaction because the obligation to pay over to the principal would arise solely from the receipt of the proceeds. *Daniels* v. *Barry*, 22 Ind. 207; *Wilson* v. *Owen*, 30 Mich. 474. Many courts have held that where an agency or partnership is for the purpose of carrying out an illegal transaction the principal or partner cannot recover the proceeds, because the relation, being inseparable from the illegal contract, is itself illegal. *Lemon* v. *Grosskopf*, 22 Wis. 447; *Leonard* v. *Poole*, 114 N. Y. 371. The opposing view is that there is a duty arising from the fiduciary relation quite disconnected from the completed illegal transaction. *Truant* v. *Elliott*, 1 B. & P. 3; *Baldwin* v. *Potter*, 46 Vt. 402. See *Woodworth* v. *Bennett*, 43 N. Y. 273, 276. But this view would be hard to support if the transaction were a serious crime. If the title to goods and proceeds, however, is always in the principal, the plaintiff need rest his claim neither on contractual nor relational obligation, and it would not seem that the existence of illegality is ever a ground for allowing third parties to deprive the plaintiff of property, as distinguished from contract, rights.

INJUNCTIONS — ACTS RESTRAINED — RESTRAINING SUIT IN A FOREIGN JURISDICTION. — The defendant brought suit in an Iowa court against the plaintiff for slander and malicious prosecution, and while that action was still pending the defendant sued the plaintiff on the same cause of action in Missouri and attached land of the plaintiff in that state. A preliminary injunction restraining the prosecution of the Missouri suit was granted, whereupon the defendant, after causing the Iowa suit to be dismissed, moved that the injunction be dissolved. *Held*, that the motion should be granted. *Jones* v. *Hughes*, 137 N. W. 1023 (Ia.). See NOTES, p. 347.

INTERSTATE COMMERCE — CONTROL BY CONGRESS — DISTRIBUTION OF RECOVERY UNDER EMPLOYERS' LIABILITY ACT. — A brakeman was killed through the negligence of the railroad while engaged in interstate commerce. A state statute specifying the persons entitled to recover damages in such a case conflicted with the federal Employers' Liability Act. *Held*, that the federal act governs. *St. Louis, San Francisco, & Texas Ry. Co.* v. *Geer*, 149 S. W. 1178 (Tex., Ct. Civ. App.).

For a criticism of a recent contrary decision, see 25 HARV. L. REV. 565. For a general discussion on the constitutionality of the federal act, see 25 HARV. L. REV. 548.

INTERSTATE COMMERCE — CONTROL BY CONGRESS — EMPLOYEES PROTECTED BY FEDERAL EMPLOYERS' LIABILITY ACT. — A brakeman was injured